

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

DARRELL INGRAM	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-32
MELANIE ALVARADO, ET AL.	§	

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Darrell Ingram, a prisoner confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Melanie Alvarado and Stephen Martin.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends granting defendant Martin's motion to dismiss the claims against him for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff alleges defendant Martin, a registered nurse, performed an EKG in accordance with the instructions of defendant Alvarado, a mid-level medical provider. Plaintiff alleges defendant Martin opined that plaintiff was suffering from a strained

muscle, but plaintiff was subsequently diagnosed with kidney damage, which was likely caused by a pain medication plaintiff was taking. Plaintiff has not alleged any facts suggesting that defendant Martin was responsible for prescribing the medication that possibly caused plaintiff's kidney damage, or that defendant Martin's opinion as to the cause of plaintiff's pain affected plaintiff's diagnosis or treatment by medical providers who were qualified to make those determinations. Plaintiff has not shown that defendant Martin was deliberately indifferent to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). As a result, the Magistrate Judge correctly concluded that plaintiff failed to state a claim upon which relief may be granted as to defendant Martin.

ORDER

Accordingly, plaintiff's objections (document no. 29) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 26) is **ADOPTED**. Defendant Martin's motion to dismiss (document no. 16) is **GRANTED**. A partial judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So Ordered and Signed

Jan 11, 2018



Ron Clark, United States District Judge